

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANGELINA M. RAMALIO and DEPARTMENT OF DEFENSE,  
KELLER ARMY COMMUNITY HOSPITAL, West Point, NY

*Docket No. 02-468; Submitted on the Record;  
Issued July 1, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a stroke causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's May 30, 2001 request for a hearing before an Office hearing representative.

On November 3, 2000 appellant's supervisor completed a notice of occupational disease and claim for compensation on appellant's behalf. She is a 59-year-old budget officer, who sustained a stroke on November 1, 2000. The supervisor reported that for the past two months appellant was working several hours of overtime pursuant to end-of-year requirements and new fiscal year programming. Her illness began, the supervisor stated, as she was preparing for a budget meeting. Appellant had just completed a working budget meeting the week before. She was unable to answer questions normally given to her.

The Office requested that appellant submit additional information to support her claim, including details of the employment factors to which she attributed her stroke and medical opinion evidence explaining how exposure to these factors contributed to her condition.

On December 12, 2000 appellant described her employment and the stress she experienced striving for perfection and maintaining the standards of the budget office. She explained that she suffered her stroke at work: "The bus was late and I arrived one and a half hours late for a meeting. After the bus dropped me off, I had to walk several blocks to the building. I spent eighteen days at Cornwall Hospital." Appellant submitted records of her hospitalization.

On January 5, 2001 the Office notified appellant that it accepted the fact that she worked overtime and was responsible for an account of 35 million dollars; however, the medical evidence submitted failed to establish that her stroke was caused by the accepted factors of employment. The Office requested that appellant submit a complete medical report providing a rationalized opinion on how her medical condition was a consequence of her work activities.

Appellant submitted an insurance claim form and resubmitted a copy of one of her hospital records showing procedures performed and her diagnosed conditions.

In a decision dated February 23, 2001, the Office denied appellant's claim for compensation. The Office found that the medical evidence failed to establish the element of causal relationship.

In a letter postmarked May 30, 2001, appellant requested a hearing before an Office hearing representative. She submitted additional medical evidence to support her claim.

In a decision dated July 25, 2001, the Office denied appellant's request on the grounds that it was untimely and that she could address the issue in her case equally well by requesting reconsideration from the district Office and submitting evidence not previously considered establishing that her medical condition was caused or aggravated by factors of her federal employment.

The Board finds that appellant has not met her burden of proof to establish that the medical condition for which she seeks compensation is causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

The Office found that appellant had established that she worked overtime and was responsible for an account of 35 million dollars. The question for determination is whether her accepted work activities caused or contributed to her stroke on November 1, 2000.

Causal relationship is a medical issue<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

Appellant submitted no medical opinion evidence, rationalized or otherwise, to support that her federal employment caused or contributed to a diagnosed condition. With no evidence to support the essential element of causal relationship, appellant failed to establish a *prima facie* claim for compensation. The Board will affirm the Office's February 23, 2001 decision denying appellant's claim.<sup>7</sup>

The Board also finds that the Office acted within its discretion in denying appellant's May 30, 2001 request for a hearing before an Office hearing representative.

Section 8124(b)(1) of the Act provides:

"Before review under section 8128(a) of this title [relating to requests for reconsideration], a claimant for compensation not satisfied with a decision of the Secretary [*i.e.*, the Office] under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>8</sup>

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>9</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>10</sup> In such a case the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>11</sup>

Because appellant made her May 30, 2001 request for a hearing more than 30 days after the Office's February 23, 2001 decision denying her claim for compensation, she is not entitled to a hearing as a matter of right. The Office, nonetheless, considered the matter and correctly advised appellant that she could address the issue in her case equally well through the reconsideration process. As appellant may address the issue of causal relationship by submitting to the district Office a request for reconsideration with a well-reasoned medical opinion explaining how her work activities caused or contributed to a diagnosed medical condition,<sup>12</sup> the

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<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). In reviewing the Office's February 23, 2001 decision, the Board may not consider the additional evidence appellant subsequently submitted with her request for a hearing before an Office hearing representative or with her appeal to this Board.

<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>10</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>11</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>12</sup> Appellant has one year from the date of this Board's opinion to make this request to the district Office and to submit the necessary medical opinion evidence to establish causal relationship.

Board finds that the Office acted within its discretion to deny her untimely request for a hearing.<sup>13</sup> The Board will affirm the Office's July 25, 2001 decision.

The July 25 and February 23, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
July 1, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>13</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).